

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CLAIRCOM DE MEXICO, S.A. DE C.V., a
Mexican corporation, CONTROTITULOS,
S.A. DE C.V., a Mexican corporation, and
GLOBALCOM, S.A. DE C.V., a Mexican
corporation,

Plaintiff,

v.

AT&T WIRELESS SERVICES, INC. (n/k/a
NEW CINGULAR WIRELESS SERVICES,
INC.),

Defendant.

No. 2:05-CV-01045-JCC

**DECLARATION OF JOHN E.
ROGERS IN SUPPORT OF REPLY
TO OPPOSITION TO MOTION FOR
PARTIAL SUMMARY JUDGMENT**

28 U.S.C. § 1746

John Rogers declares and says:

1. I am an attorney and I was involved in the drafting and negotiation of the parties' Joint Venture Operating Agreement, dated July 14, 1995 ("JVOA") on behalf of Claircom de Mexico, S.A. DE C.V. ("CDM"), Globalcom, S.A. de C.V. ("Globalcom"), and Controtitulos, S.A. de C.V. ("Controtitulos"). I am competent to declare the statements contained herein based upon my own personal knowledge. At the time of the drafting and negotiation of the JVOA, I was a partner in the law firm of Carlsmith Ball Wichman Murray Case & Ichiki, and was based in the firm's Mexico City office.

2. I was involved in the drafting of the liquidated damages provision contained in the JVOA, but the ultimate language that appeared in the JVOA was the product of extensive

**DECL. OF JOHN ROGERS IN SUPPORT OF REPLY TO OPPOSITION
TO MOTION FOR PARTIAL SUMMARY JUDGMENT - 1**

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LANE POWELL PC
1420 5TH AVENUE, SUITE 4100
SEATTLE, WASHINGTON 98101-2338
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1 negotiation between the parties, in which the other party to the JVOA, Claircom
2 Communication Group, Inc. ("CCG"), was represented throughout by David M. Williamson
3 of the Seattle firm Perkins Coie. The nature of such negotiation is suggested by the steps
4 described below.

5 3. I prepared an initial draft of the JVOA, dated March 23, 1995, which did not
6 contain a liquidated damages provision. A copy of such draft is attached as Exhibit A hereto.

7 4. With his letter dated April 13, 1995, Mr. Williamson sent me his redraft of the
8 JVOA; a copy of his letter and the marked version of his redraft are attached as Exhibit B
9 hereto.

10 5. After reviewing the changes Mr. Williamson proposed in his redraft, I prepared
11 a new draft, which I sent to him with my letter, dated May 2, 1995 and which included a
12 liquidated damages provision. A copy of such letter and new draft are attached as Exhibit C
13 hereto.

14 6. Mr. Williamson then responded in an eight-page letter, dated May 12, 1995,
15 which contained twenty-seven (27) numbered comments. Change No. 22 contained his
16 suggested rewrite of Section 10(b) of the JVOA – the liquidated damages provision. A copy
17 of such letter is attached as Exhibit D hereto.

18 7. After we sent Mr. Williamson a revised draft of the JVOA, he responded with
19 a six-page letter, dated May 19, 1995, with twenty-six (26) numbered comments, including
20 comment 23 that the "amount of liquidated damages will be left blank in the next draft of the
21 agreement". He also sent me a separate letter of the same date describing comments on the
22 draft JVOA from his Mexican counsel. A copy of the two letters is attached as Exhibit E
23 hereto.

24 8. On May 26, 1995, I faxed to Mr. Williamson another revised draft (dated May
25 25, 1995) of the JVOA, containing further changes to the liquidated damages provision. A
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1 copy of my fax cover page and the accompanying revised draft are attached as Exhibit F
2 hereto.


3 9. In his letter dated June 2, 1995 which was faxed to me, Mr. Williamson said,
4 "Enclosed is a marked draft of the Joint Venture Operation Agreement revealing Claircom's
5 final changes to the Agreement. Mr. Danaeé will be contacting Mr. Ohara to negotiate the
6 "Applicable Percentage" for the liquidated damages calculation." The draft prepared by Mr.
7 Williamson contained a further proposed change to the liquidated damages provision. A copy
8 of such letter, the fax cover page and the relevant pages of the new draft of the JVOA is
9 attached as Exhibit G hereto.

10 10. Mr. Williamson then produced another draft, dated June 16, 1995, with further
11 changes to the JVOA, including with respect to the liquidated damages provision. A copy of
12 such draft is attached as Exhibit H hereto.

13 11. I then prepared a revised draft, dated July 2, 1995, of the JVOA, containing
14 still more changes to the liquidated damages provision. A copy of the relevant pages of such
15 draft is attached as Exhibit I hereto. This appears to be the last draft containing changes in
16 such provision. Thus, it is obvious that the ultimate liquidated damages provision in the
17 JVOA was the product of substantial negotiation between the parties -- in which CCG was
18 represented throughout by competent counsel.

19 12. I declare under penalty of perjury under the laws of the United States of
20 America that the foregoing is true and correct.

21 Executed this 9th day of May, 2006 at Mexico City, Mexico.

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24 John E. Rogers
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☒ electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Karolyn Ann Hicks
kah@stokeslaw.com

☐ hand delivered to the following non-CM/ECF participants:

☐ faxed and mailed by first class United States mail, postage prepaid, to the following non-CM/ECF participants:

/s/Leah Burrus
Leah Burrus